



2003 Annual Report to the Legislature

Pesticide Investigations and Enforcement

February 18, 2004

As stated in RCW 15.58.420 and RCW 17.21.350, the Washington State Department of Agriculture (WSDA) is to report annually to the appropriate committees of the House of Representatives and the Senate on the activities of the department under Chapter 15.58 RCW, the Washington Pesticide Control Act, and Chapter 17.21 RCW, the Washington Pesticide Application Act. The report is to include (1) a review of the department's pesticide incident investigation and enforcement activities, with the number of cases investigated and the number and amount of civil penalties assessed; and (2) a summary of the pesticide residue food monitoring program with information on the food samples tested and results of the tests, a listing of the pesticides for which testing is done, and other pertinent information.

This report presents information only on the department's pesticide incident investigation and enforcement activities. The department does not carry out a pesticide residue food monitoring program and no longer participates in the pesticide residue food monitoring program carried out by the U.S. Food and Drug Administration (FDA).

For more information about this report or program, please contact Cliff Weed, Compliance Program Manager, Pesticide Management, at (360) 902-2036.

Pesticide Investigations and Enforcement

The Pesticide Management Division of the Washington State Department of Agriculture (WSDA), under authorities granted by:

Chapter 15.58 RCW, the Washington Pesticide Control Act,
Chapter 17.21 RCW, the Washington Pesticide Application Act,

and their associated Administrative Codes, protects the environment and the physical and economic health and welfare of the citizens of the state.

As provided in these statutes, the Division regulates the sale and use of all pesticides in Washington State. Among other activities, this involves the registration of more than 8,500 pesticide products, the licensing of approximately 25,000 pesticide applicators, dealers and consultants, and the investigation of complaints of pesticide misuse. The Division coordinates activities closely with other Washington state agencies, federal agencies and citizens of the state.

Number of Complaints (Cases Investigated)

In calendar year 2003, WSDA investigated 222 complaints involving pesticide use, sales, and distribution; pesticide licensing; and building inspections for wood-destroying organisms. Table 1 provides the total number of complaints investigated for the past three years.

Table 1

Year	Total Complaints
2001	253
2002	253
2003	222

(2001 and 2002 were the same)

Please note: The complaints in a given year do not directly correlate with the violations in that year. Enforcement action is often completed in the year after the complaint is received, due to when the complaint is received and the complexity of the investigation. It is also important to note that some complaints give rise to actions being administered to several individuals.

For information on enforcement action taken on specific complaints, see the appropriate annual report of the Pesticide Incident Reporting and Tracking (PIRT) Review Panel, prepared by the Department of Health as required by RCW 70.104.090. WSDA is required to respond to cases of human exposure within one working day of receipt. In 2003, all 22 human exposure complaints were responded to within one working day of receipt. All other cases were responded to within two working days.

Type of Activity Involved in Complaint

Table 2 shows the type of activity for complaints resulting in violations from 2001 to 2003.

Table 2

Type of Activity	2001	2002	2003
Agricultural	43	42	31
Commercial/Industrial	41	38	44
PCO/WDO	26	22	36
Residential (non commercial)	22	30	8
Right-of Way	6	1	8
Total Violations	102	115	123*

*Total based upon cases completed to date

Location

The top counties where complaints originated include: King 23, Pierce 21, Yakima 23, Spokane 19, Grant 19, Thurston 16, Benton 13, and Chelan 12. Table 3 provides a complete listing of complaints by county for the past three years.

Table 3

County	2001	2002	2003
Adams	3	5	4
Asotin	0	1	1
Benton	17	8	13
Chelan	8	16	12
Clallam	0	1	2
Clark	5	8	11
Columbia	1	2	0
Cowlitz	4	1	1
Douglas	8	10	8
Ferry	0	0	0
Franklin	6	6	7
Garfield	0	4	0
Grant	20	14	19
Grays Harbor	7	3	1
Island	5	0	0
Jefferson	3	1	0
King	21	24	23
Kitsap	9	4	4
Kittitas	0	2	1
Klickitat	4	6	3
Lewis	11	4	6
Lincoln	1	4	5

County	2001	2002	2003
Mason	5	0	1
Okanogan	3	8	5
Pacific	1	0	0
Pend Oreille	1	0	1
Pierce	12	16	21
San Juan	1	0	0
Skagit	3	10	4
Skamania	0	1	0
Snohomish	8	7	4
Spokane	20	28	19
Stevens	2	2	4
Thurston	10	16	16
Wahkiakum	0	0	0
Walla Walla	5	10	6
Whatcom	15	4	3
Whitman	1	4	6
Yakima	33	23	11
Totals	253	253	222

Formal and Non-Formal Enforcement Actions

WSDA can take a range of actions on determination of a violation. **Only the Notice of Intent (NOI) is a formal enforcement action under the Administrative Procedures Act (RCW 34.05).**

An NOI is a formal enforcement document issued stating the department's intent to assess civil penalties to the alleged violator and/or to suspend, deny or revoke the alleged violators pesticide license.

Other non-formal enforcement actions, are:

- A verbal warning administered verbally by a field investigator to an alleged infractor and specifies the violative act.
- An advisory letter which is written correspondence to an alleged infractor that provides specific advice on how to comply with the laws and rules related to pesticides.
- A Notice of Correction (NOC) which is written correspondence issued to an alleged infractor when minor violations of the laws and rules related to pesticides has occurred. The NOC identifies the specific law and or rule that was violated, information on how to correct the violation and a time by which the violation must be corrected.

Under WSDA's pesticide violation penalty matrix, the maximum penalty WSDA may assign is \$7,500 per violation and/or 90 days license suspension or license denial or revocation. The typical penalty for a non-serious, first time violation is \$200 to \$500 and a license suspension of two to six days; however, a first time violation would, in most cases, result in the administration of an NOC and not advance to the civil penalty stage until a repeat violation was identified.

The typical penalty for a first-time human exposure violation is \$350 to \$550 and a license suspension of five to nine days; however, the actual case results, which reflect multiple violations and/or aggravating circumstances, have resulted in fines averaging \$1000. In first-time human exposure cases, WSDA may proceed directly to civil penalty without first issuing an NOC. WSDA may also refer appropriate cases to EPA for criminal prosecution or civil action.

Table 4 summarizes the formal enforcement actions completed in the last three years. As you will see, there is a significant difference in the number of violations and the amount of license suspensions and civil penalties administered in 2002 and 2003 when compared to 2001. These variances are due to several factors, which include:

- A number of backlogged cases were completed in 2002.
- The revised penalty matrix rules provide for higher civil penalties and license suspensions.
 - The penalty matrix rules, revised effective January 12, 2001, provided for modest increases in civil fines and license suspensions at the first level of violation and substantive increases at subsequent levels. As a result, penalties from the effective date of the rule reflect higher levels than previous years.
- Several offenders received a higher penalty for repeat violations of a similar nature.

Table 4

Formal Enforcement Actions Completed, 2001-2003	2001	2002	2003
Notices of Intent (NOI) issued	18	52	33
License Suspension (days)	206	1,479	294
Civil penalties assessed	\$13,150	\$51,125	\$28,350

To the extent possible, WSDA tries to work with individuals to correct violative acts before using our civil penalty authority by issuing an NOC. Our records indicate that we administer more NOC's than NOI's. An NOC is not considered a formal enforcement action under RCW 43.05.100 (2). Other actions, such as a verbal warning or advisory letter, are not tracked electronically, but are part of a case investigation file. Table 5 represents the number of NOC's issued.

Table 5

Non-Formal Enforcement Action	2001	2002	2003
Notices of Correction (NOC) issued	112	101	147